

AMENDED IN ASSEMBLY AUGUST 7, 2008

AMENDED IN ASSEMBLY JULY 12, 2007

AMENDED IN ASSEMBLY JUNE 18, 2007

AMENDED IN SENATE APRIL 17, 2007

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 541

Introduced by Senator Alquist

February 22, 2007

~~An act to amend Section 798.74 of the Civil Code, relating to mobilehomes.~~ *An act to amend Sections 1280.1 and 1280.3 of, and to add Section 1280.15 to, the Health and Safety Code, relating to health facilities.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Alquist. ~~Mobilehome parks.~~ *Clinics, health facilities, home health agencies, and hospices: administrative penalties and patient information.*

Existing law provides for the licensure and regulation of clinics, health facilities, home health agencies, and hospices by the State Department of Public Health. A violation of these provisions is a misdemeanor.

Existing law authorizes the department to assess a licensee of a general acute care hospital, an acute psychiatric hospital, or a special hospital an administrative penalty not to exceed \$25,000 if the licensee receives a notice of deficiency constituting an immediate jeopardy to the health or safety of a patient and is required to submit a plan of

correction. Existing law makes these provisions applicable to incidents occurring on or after January 1, 2007.

Existing law also provides that upon the adoption of specified regulations, the administrative penalty for such a violation may be up to \$50,000. If the violation does not constitute an immediate jeopardy violation, the penalty may be up to \$17,500, except that no penalty shall be assessed for a minor violation.

Under existing law, moneys collected by the department as a result of the imposition of the above penalties are required to be deposited into the Licensing and Certification Program Fund, to be expended, upon appropriation by the Legislature, to support internal departmental quality improvement activities.

This bill would increase the above administrative penalties from \$25,000 to \$100,000, from \$50,000 to \$150,000, and from \$17,500 to \$25,000, respectively, and would apply the penalty provisions only to incidents occurring on or after January 1, 2009.

This bill would require specified health facilities and agencies to prevent unlawful access to, or use, or disclosure of, a patient's medical information, as defined. The bill would authorize the department to assess an administrative penalty of \$25,000 per patient for a violation of these provisions, and \$17,500 for each subsequent accessing, use, or disclosure of that information and would allow the department to refer violations to the office of Health Information Integrity for enforcement.

The bill would require all of the administrative penalties to be deposited into the Internal Departmental Quality Improvement Account, which would be created within the existing Special Deposit Fund, and would delete the requirement that certain of the penalties be deposited into the Licensing and Certification Program Fund. The bill would require moneys in the account to be used for quality improvement activities in the Licensing and Certification Program.

This bill would impose specified reporting requirements on a health facility or agency with respect to unlawful access to, or use, or disclosure of, a patient's medical information, and would authorize the department to assess a penalty for the failure to report, in the amount of \$100 for each day that the unauthorized access, use, or disclosure is not reported, up to a maximum of \$250,000. The bill would authorize a licensee to dispute a determination of the department regarding a failure to make a report required by the bill, as provided.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

This bill would be operative contingent on the enactment of AB 211 of the 2007–08 Regular Session on or before January 1, 2009.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Mobilehome Residency Law grants the management of a mobilehome park the right of prior approval of a purchaser of a mobilehome that will remain in the park, as specified. Under that law, approval by the management cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. Under that law, the management may require a purchaser to document the amount and source of his or her gross monthly income or means of financial support.~~

~~This bill would additionally provide that in determining whether the purchaser has the financial ability to pay the rent and charges of the park, the management shall not withhold approval based solely on the purchaser's failure to evidence an income that satisfies any minimum income requirement of the park. The bill would require the management to consider, in addition to income, and, if provided by the purchaser, the purchaser's financial assets, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1280.1 of the Health and Safety Code is
2 amended to read:

3 1280.1. (a) Prior to the effective date of regulations adopted
4 to implement Section 1280.3, *with respect to incidents occurring*
5 *on and after January 1, 2009*, if a licensee of a health facility
6 licensed under subdivision (a), (b), or (f) of Section 1250 receives

1 a notice of deficiency constituting an immediate jeopardy to the
2 health or safety of a patient and is required to submit a plan of
3 correction, the department may assess the licensee an
4 administrative penalty in an amount not to exceed ~~twenty-five~~
5 ~~thousand dollars (\$25,000)~~ *one hundred thousand dollars*
6 *(\$100,000)* per violation.

7 (b) If the licensee disputes a determination by the department
8 regarding the alleged deficiency or the alleged failure to correct a
9 deficiency, or regarding the reasonableness of the proposed
10 deadline for correction or the amount of the penalty, the licensee
11 may, within 10 days, request a hearing pursuant to Section ~~100171~~
12 ~~131071~~. Penalties shall be paid when appeals have been exhausted
13 and the department's position has been upheld.

14 (c) For purposes of this section "immediate jeopardy" means a
15 situation in which the licensee's noncompliance with one or more
16 requirements of licensure has caused, or is likely to cause, serious
17 injury or death to the patient.

18 ~~(d) This section shall apply only to incidents occurring on or~~
19 ~~after January 1, 2007.~~

20 (e)

21 (d) No new regulations are required or authorized for
22 implementation of this section.

23 (f)

24 (e) This section shall become inoperative on the effective date
25 of regulations promulgated by the department pursuant to Section
26 1280.3.

27 *SEC. 2. Section 1280.15 is added to the Health and Safety*
28 *Code, to read:*

29 *1280.15. (a) A clinic, health facility, agency, or hospice*
30 *licensed pursuant to Section 1204, 1250, 1725, or 1745 shall*
31 *prevent unlawful access to, and use or disclosure of, patients'*
32 *medical information, as defined in subdivision (g) of Section 56.05*
33 *of the Civil Code. The department may assess an administrative*
34 *penalty for a violation of this section in the amount of twenty-five*
35 *thousand dollars (\$25,000) per patient whose medical information*
36 *was unlawfully accessed, used, or disclosed, and seventeen*
37 *thousand five hundred dollars (\$17,500) per subsequent occurrence*
38 *of unlawful access, use, or disclosure of the patients' medical*
39 *information.*

(b) A clinic, health facility, agency, or hospice to which subdivision (a) applies shall report any unlawful access to, or use or disclosure of, a patient's medical information to the department no later than five days after the unauthorized access, use, or disclosure has been detected. A clinic, health facility, agency, or hospice shall also report any unlawful access to, or use, or disclosure of a patient's medical information to the affected patient or the patient's representative, no later than five days after the unauthorized access, use, or disclosure has been detected.

(c) If a clinic, health facility, agency, or hospice to which subdivision (a) applies fails to report the unlawful access to, or use or disclosure of, a patient's medical information to the department, or to the patient or the patient's representative, the department may assess the licensee a penalty in the amount of one hundred dollars (\$100) for each day that the unauthorized access, use, or disclosure is not reported, following the initial five-day period specified in subdivision (b). However, the total combined penalty assessed by the department shall not exceed two hundred fifty thousand dollars (\$250,000).

(d) All penalties collected by the department pursuant to this section, Section 1280.1, and Section 1280.3 shall be deposited into the Internal Departmental Quality Improvement Account, which is hereby created within the Special Deposit Fund under Section 16370 of the Government Code. Upon appropriation by the Legislature, moneys in the account shall be expended for quality improvement activities in the Licensing and Certification Program.

(e) If the licensee disputes a determination by the department regarding a failure to prevent or failure to timely report unlawful access to, or use or disclosure of, patients' medical information, or the imposition of a penalty under this section, the licensee may, within 10 days of receipt of the penalty assessment, request a hearing pursuant to Section 131071. Penalties shall be paid when appeals have been exhausted and the penalty has been upheld.

(f) In lieu of disputing the determination of the department regarding a failure to prevent or failure to timely report unlawful access to, or use or disclosure of, patients' medical information, transmit to the department 75 percent of the total amount of the administrative penalty, for each violation, within 30 business days of receipt of the administrative penalty.

(g) *Notwithstanding any other provision of law, the department may refer violations of this section to the office of Health Information Integrity for enforcement pursuant to Section 130303.*

SEC. 3. *Section 1280.3 of the Health and Safety Code is amended to read:*

1280.3. (a) Commencing on the effective date of the regulations adopted pursuant to this section, the director may assess an administrative penalty in an amount of up to *one hundred fifty thousand dollars*—~~(\$50,000)~~ *(\$150,000)* per immediate jeopardy violation against a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250.

(b) Except as provided in subdivision (c), for a violation of this chapter or the rules and regulations promulgated thereunder that does not constitute a violation of subdivision (a), the department may assess an administrative penalty in an amount of up to ~~seventeen thousand five hundred dollars (\$17,500)~~ *twenty-five thousand dollars (\$25,000)* per violation. This subdivision shall also apply to violation of regulations set forth in Article 3 (commencing with Section 127400) of Chapter 2 of Part 2 of Division 107 or the rules and regulations promulgated thereunder.

The department shall promulgate regulations establishing the criteria to assess an administrative penalty against a health facility licensed pursuant to subdivisions (a), (b), or (f) of Section 1250. The criteria shall include, but need not be limited to, the following:

- (1) The patient's physical and mental condition.
 - (2) The probability and severity of the risk that the violation presents to the patient.
 - (3) The actual financial harm to patients, if any.
 - (4) The nature, scope, and severity of the violation.
 - (5) The facility's history of compliance with related state and federal statutes and regulations.
 - (6) Factors beyond the facility's control that restrict the facility's ability to comply with this chapter or the rules and regulations promulgated thereunder.
 - (7) The demonstrated willfulness of the violation.
 - (8) The extent to which the facility detected the violation and took steps to immediately correct the violation and prevent the violation from recurring.
- (c) The department shall not assess an administrative penalty for minor violations.

1 (d) The regulations shall not change the definition of immediate
2 jeopardy as established in this section.

3 (e) The regulations shall apply only to incidents occurring on
4 or after the effective date of the regulations.

5 (f) If the licensee disputes a determination by the department
6 regarding the alleged deficiency or alleged failure to correct a
7 deficiency, or regarding the reasonableness of the proposed
8 deadline for correction or the amount of the penalty, the licensee
9 may, within 10 working days, request a hearing pursuant to Section
10 100171. Penalties shall be paid when all appeals have been
11 exhausted and the department's position has been upheld.

12 ~~(g) Moneys collected by the department as a result of~~
13 ~~administrative penalties imposed under this section and Section~~
14 ~~1280.1 shall be deposited into the Licensing and Certification~~
15 ~~Program Fund established pursuant to Section 1266.9. These~~
16 ~~moneys shall be tracked and available for expenditure, upon~~
17 ~~appropriation by the Legislature, to support internal departmental~~
18 ~~quality improvement activities.~~

19 ~~(h)~~

20 (g) For purposes of this section, "immediate jeopardy" means
21 a situation in which the licensee's noncompliance with one or more
22 requirements of licensure has caused, or is likely to cause, serious
23 injury or death to the patient.

24 *SEC. 4. This act shall become operative only if Assembly Bill*
25 *211 of the 2007–08 Regular Session is enacted and becomes*
26 *effective on or before January 1, 2009.*

27 *SEC. 5. If the Commission on State Mandates determines that*
28 *this act contains costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*

32 ~~SECTION 1. Section 798.74 of the Civil Code is amended to~~
33 ~~read:~~

34 ~~798.74. (a) (1) The management may require the right of prior~~
35 ~~approval of a purchaser of a mobilehome that will remain in the~~
36 ~~park and that the selling homeowner or his or her agent give notice~~
37 ~~of the sale to the management before the close of the sale. Approval~~
38 ~~cannot be withheld if the purchaser has the financial ability to pay~~
39 ~~the rent and charges of the park unless the management reasonably~~

1 determines that, based on the purchaser's prior tenancies, he or
2 she will not comply with the rules and regulations of the park.

3 (2) In determining whether the purchaser has the financial ability
4 to pay the rent and charges of the park, all of the following shall
5 apply:

6 (A) The management shall not require the purchaser to submit
7 copies of any personal income tax returns in order to obtain
8 approval for residency in the park.

9 (B) The management may require the purchaser to document
10 the amount and source of his or her gross monthly income or means
11 of financial support.

12 (C) The management shall not withhold approval based solely
13 on the purchaser's failure to evidence an income that satisfies any
14 minimum income requirement of the park.

15 (D) In addition to income, the management shall consider, if
16 provided by the purchaser, the purchaser's other financial assets,
17 whether or not income producing, including, but not limited to,
18 savings accounts, certificates of deposit, stock portfolios, trust
19 interests of which the purchaser is a beneficiary, real property, and
20 similar financial assets that can be liquidated or sold.

21 (3) Upon request of a prospective homeowner who proposes to
22 purchase a mobilehome that will remain in the park, management
23 shall inform that person of the information management will
24 require in order to determine if the person will be acceptable as a
25 homeowner in the park.

26 (4) Within 15 business days of receiving all of the information
27 requested from the prospective homeowner, the management shall
28 notify the seller and the prospective homeowner, in writing, of
29 either acceptance or rejection of the application, and the reason if
30 rejected. During this 15-day period the prospective homeowner
31 shall comply with the management's request, if any, for a personal
32 interview. If the approval of a prospective homeowner is withheld
33 for any reason other than those stated in this article, the
34 management or owner may be held liable for all damages
35 proximately resulting therefrom.

36 (b) If the management collects a fee or charge from a prospective
37 purchaser of a mobilehome in order to obtain a financial report or
38 credit rating, the full amount of the fee or charge shall be credited
39 toward payment of the first month's rent for that mobilehome
40 purchaser. If, for whatever reason, the prospective purchaser is

1 ~~rejected by the management, the management shall refund to the~~
2 ~~prospective purchaser the full amount of that fee or charge within~~
3 ~~30 days from the date of rejection. If the prospective purchaser is~~
4 ~~approved by the management, but, for whatever reason, the~~
5 ~~prospective purchaser elects not to purchase the mobilehome, the~~
6 ~~management may retain the fee, or a portion thereof, to defray its~~
7 ~~administrative costs under this section.~~

O